

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

Dhodha.	Versus	State of Rajasthan through Superintendent (Law), Central Customs & Excise Department.
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S.B. Criminal Jail Appeal No.607/2001 against
the judgment and order dated 19-6-2001 passed
by the Special Judge (Economic Offences),
Jodhpur, in Criminal Case No. 2/2000 (81/1997).

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Date of Judgment: May 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. R.S. Chouhan, Amicus Curiae, for the appellant.
Mr. Durga Ram for Mr. K.S. Nahar, for respondent-department.

BY THE COURT:

Appellant Dhodha has filed the instant appeal through jail against the judgment and order dated 19-6-2001 passed by the Special Judge (Economic Offences), Jodhpur (for short, "the trial Court" hereinafter) in Criminal Case No. 2/2000 (81/97), whereby the trial Court convicted the appellant for the offence under Section 135 (1) (i) of the Customs Act, 1962 (for short, "the Act" hereinafter) and sentenced him to undergo seven years' simple imprisonment and a fine of Rs.2000/-, in default of payment of fine further to undergo two months' simple

imprisonment.

I have heard learned Amicus Curiae for the appellant and the counsel appearing for the respondent Custom Department. Carefully gone through the judgment and order impugned, as also the record of the trial Court.

On a complaint filed by the respondent Customs Department dated 10-3-1997, the appellant was put to trial for the offence under Section 135 (1) (i) of the Act. The trial Court framed charges, to which the appellant denied and sought trial. The complainant adduced evidence by producing as many as nine witnesses and the documents EX.P/1 to EX.P/7. During investigation, the statement of appellant under Section 108 of the Act, EX.P/4, was recorded.

PW 4 Bhagwan Ram Soni, the Divisional Superintendent, Jaisalmer, received a secret information on 25-5-1994 at 2:30 PM that near to road Ramgarh-Asuta, at 11 Kilometer Stone, two persons are standing with a camel concealing the smuggled goods in the sand dunes. He along with the Station House Officer, Police Station, Ramgarh, went to the place disclosed in the secret information. On search being carried out, 23 silver-ingots were found concealed in the sand-dunes. The appellant and co-accused Jumma were interrogated. During investigation, appellant made a statement under Section 108 of the Act, EX.P/4, voluntarily stating that he, along with co-

accused Jumma, a Pak-National, brought the said silver from Pakistan. Seeing the B.S.F. Personnel, the silver was concealed by them in the sand-dunes, the place which he had disclosed and admitted that it is he who smuggled the silver. On weighing the silver, it was found 28.898 kgs having purity 999-Tunch. From the statements of the prosecution witnesses PW 2 B.L. Soni, PW 3 Padam Singh Meena and PW 4 Bhagwan Das Soni, the complainant has proved the case beyond reasonable doubt that it was the appellant and co-accused Jumma, a Pak-National, who smuggled the said silver from Pakistan.

The statement of appellant under Section 108 of the Act, which was recorded vide EX.P/4, has been proved beyond reasonable doubt which shows that it was the appellant who voluntarily made confessional statement. The confessional statement made under Section 108 of the Act is admissible in evidence.

There are other witnesses, viz. PW 6 Khet Singh, PW 7 Hari Singh and PW 8 Shivdan Singh, who have proved the search and seizure vide EX.P/8. The moulds of the feet of camel, on which the appellant and co-accused Jumma brought the silver from Pakistan, were proved by PW 7 Hari Singh. PW 9 Mr. Janardan Vyas, who at the relevant time was posted as the Chief Judicial Magistrate, Jaisalmer, has verified the silver deposited in the Malkhana of the Customs Department. vide Entry No.VME

3/94.

From the statement of the appellant recorded under Section 104 of the Act, EX.P/4, it also appears that the appellant went to Pakistan for smuggling the silver; however, while going to Pakistan, he carried with him three Jericans of Acitic Enhydried, the substance, possession or carrying of which is an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985.

On a careful scrutiny of the statement of the appellant under Section 108 of the Act EX.P.1, it is established that it was the appellant, along with co-accused Jumma, a Pak-National, who smuggled the silver in question from Pakistan. There is consistent link evidence regarding search and seizure as also the purity-test of the silver, which was subsequently verified by PW 9 Mr. Janardan Vyas, the then Chief Judicial Magistrate, Jaisalmer. On close scrutiny of the statements of the prosecution witnesses, in my view, the trial Court was justified in convicting and sentencing the appellant for the offence noticed-above.

It is settled law that a conviction can be based on the confessional statement made by the accused under Section 108 of the Act. In the instant case, the confessional statement EX.P/4 made by the appellant under Section 108 of the Act appears to have been made voluntarily and, therefore, it inspires

confidence. In the circumstances, therefore, I do not find any error, illegality or perversity in the judgment and order impugned convicting and sentencing the appellant.

In the result, I do not find any merit in the jail appeal and it is dismissed accordingly. The judgment and order impugned dated 19-6-2001 passed by the trial Court in Criminal Case No.2/2000 (81/97) convicting and sentencing the appellant is confirmed.

(H.R. PANWAR), J.

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